

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): S. YAMAZAKI, et al.
Serial No.: 10/823,020
Filed: April 12, 2004
For: SCANNING OPTICAL SYSTEM

Group Art Unit: 2872
Examiner: James Phan

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

Mail Stop

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicant hereby requests that the holding of abandonment in the above-identified application be withdrawn on the basis that the Applicant did not receive the Office Action mailed November 4, 2005 (or rather November 1, 2005). In addition, the Applicant requests that the November 4, 2005 Office Action be re-mailed and the time period for response thereto be restarted. No petition fee is believed to be required.

DISCUSSION

On June 22, 2006, the United States Patent and Trademark Office (USPTO) mailed a Notice of Abandonment (PTO-1432) (Exhibit A). The Notice of Abandonment stated that the above-identified application became abandoned on the basis of "Applicant's failure to timely file a proper reply to the Office letter mailed on November 04, 2005." As further discussed below, the Applicant did not receive the November 4, 2005 Office Action.

Section 711.03(c) of the MPEP states, in part, that:

“The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket records where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner’s statement.”

The undersigned hereby states that the Office Action mailed November 4, 2005 (or rather November 1, 2005) has, to date, not been received. The undersigned further states that a search of the file jacket and docket records for this application indicates that the November 4, 2005 Office Action has not been received. A copy of the docket record is attached, as Exhibit B, showing where the November 4, 2005 Office Action would have been indicated had it been received and docketed. Furthermore, it is evident from PAIRS that this Office Action was never delivered but rather was returned to the USPTO as undelivered (Exhibit C).

CONCLUSION

On the basis of the above discussion and the attached documentary evidence (Exhibit B) as well as PAIRS (Exhibit C), the Applicant requests that (1) the holding of abandonment in the above-identified application be withdrawn on the basis that Applicants did not receive the Office Action mailed November 4, 2005, (2) the November 4, 2005 Office Action be re-mailed, and (3) the time period for response thereto be restarted.


AUTHORIZATIONS

The Commissioner is hereby authorized to charge any fees which may be required for the consideration of this paper, or credit any overpayment, to Deposit Account No. 13-4500, Order No. 1232-5377. A DUPLICATE COPY OF THIS SHEET IS ATTACHED.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: July 13, 2006

By: _____


James Hwa
Registration No. 42,680
(202) 857-7887 Telephone
(202) 857-7929 Facsimile

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, NY 10281-2101

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,020	04/12/2004	Shoichi Yamazaki	1232-5377	3545
27123	7590	06/22/2006		
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			EXAMINER PHAN, JAMES	
			ART UNIT 2872	PAPER NUMBER

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DOCKET DEPARTMENT

Docketed By: Am Date: 6/30
Audited By: gm Date: 6/30
Filed By: _____ Date: _____

Notice of Abandonment

Application No.

10/823,020

Examiner

James Phan

Applicant(s)

YAMAZAKI ET AL.

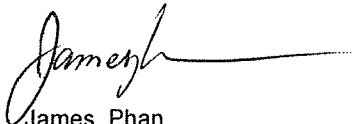
Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 04 November 2005.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:



James Phan
Primary Examiner
Art Unit: 2872

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

EXHIBIT B

62

162665	767422, 397	Letter of Allegations
102875	105251, 130	Letter of Compliance of Appeal
162805	105251, 120	Timing Receipt
1028705	77/20, 1476	Appeal is unsubmitted
05705	11240, 265	Timing Receipt
1027125	16868, 863	Written Timing Receipt

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11/1/05	91096852	November 2, 2005	Truils e Appendo, Design
11/2/05	787739, 913		Design Service & Catalog for S&P
11/2/05	787740, 585		Design Service & Catalog for S&P
11/2/05	871160, 144		Design Service & Catalog for S&P
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	10/28/05	11/229, 511	3 mo. Cerebral, 2 mo. 100
	10/31/05	10/99, 658	3 mo. Cerebral, 2 mo. 100
	10/31/05	10/192, 352	3 mo. Cerebral, 2 mo. 100
	11/2/05	76/414, 140	3 mo. Cerebral, 2 mo. 100
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	10/31/05	11/922, 935	3 mo. Cerebral, 2 mo. 100
	10/31/05	10/248, 797	3 mo. Cerebral, 2 mo. 100
	10/31/05	11/153, 574	3 mo. Cerebral, 2 mo. 100
	10/31/05	11/220, 548	3 mo. Cerebral, 2 mo. 100
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 Examined Answer

Date

App #

Description

November 11,

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Reptec. Filing Receipt

10-27

606230530

New Revised Patent Pub. Data

10-27

11/217468

Not of Pub. of App.

11-8

11/65780

Letter withdrawn. Not of App. Complaint raised.

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10/774258

Office Action Summary (North)

11-8

10/965497

Filing Receipt

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Issue Notification

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Issue Notification

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Issue Notification

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Request of Cert. of Correction

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Issue Notification

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Not of Pub. of Application

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New Revised Patent Pub. Data

Not of Pub. of App.

Letter withdrawn. Not of App. Complaint raised.

Office Action Summary (North)

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Office Action Summary (North)

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3 North Office Action

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2 Investigation Papers

2 Investigation Papers

2 Status Update

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11/17/05	10376, 846	Notice of collection
11/18/05	09925, 852	Notice of collection
11/19/05	08778, 124	Notice of collection
—	79010, 411	Same notification
—	79019, 386	g.m.o. office action
—	79004, 703	g.m.o. office action
11/22/05	09709, 659	g.m.o. office action
11/22/05	09584, 659	g.m.o. office action
11/22/05	10007, 605	g.m.o. office action
11/22/05	1105, 113	g.m.o. office action
11/22/05	10701, 677	g.m.o. office action
11/22/05	10081, 626	g.m.o. office action
11/22/05	09620, 528	g.m.o. office action
11/22/05	10393, 604	g.m.o. office action
11/22/05	10694, 721	g.m.o. office action
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11/22/05	10193, 427	g.m.o. office action
11/22/05	10375, 371	g.m.o. office action
11/23/05	10377, 363	g.m.o. office action
11/23/05	10283, 684	g.m.o. office action
11/18/05	79001, 554	g.m.o. office action
11/22/05	76274, 463	g.m.o. office action
11/22/05	09188, 810	g.m.o. office action
11/15/05	10523, 011	g.m.o. office action
11/15/05	10543, 011	g.m.o. office action
11/15/05	10733, 424	g.m.o. office action
11/21/05	79001, 776	g.m.o. office action
11/21/05	10221, 536	g.m.o. office action
11/18/05	10623, 657	g.m.o. office action
11/21/05	09764, 679	g.m.o. office action
11/22/05	10471, 528	g.m.o. office action
11/23/05	10124, 637	g.m.o. office action

11/21/05	09/850,073	3 mo. Office Action
11/21/05	10/311,111	Notice of non-compliant Amendment
11/18/05	79/001,553	Notice of Abandonment
11/16/05	79/003,909	Notice of Publication
11/23/05	10/433,844	Advisory Action Appeal Brief
11/21/05	10/521,305	Notification of Change in Requirement
11/23/05	11/261,376	Notice of MPEP Parts - 2nd
11/23/05	10/188,937	Filing Receipt
11/22/05	10/844,919	Notice of Allowance
11/22/05	10/887,126	Notice of Allowance
11/21/05	11/112,821	Notice of Allowance
11/23/05	10/916,122	Notice of Allowance
11/23/05	10/644,197	Notice of Allowance
11/18/05	11/178,432	Notice of Allowance
11/19/05	11/073,307	Notice of Publication of Abstract
11/18/05	10/519,955	Notice of Publication of Abstract
11/17/05	11/131,113	Notice of Publication of Abstract
11/17/05	10/384,554	Notice of Publication of Abstract
11/17/05	11/044,888	Notice of Publication of Abstract
11/18/05	11/019,694	Notice of Publication of Abstract
11/18/05	11/013,111	Notice of Publication of Abstract
11/19/05	11/171,006	Notice of Publication of Abstract
11/17/05	10/648,489	Notice of Publication of Abstract
11/23/05	11/061,888	Notice of Publication of Abstract
11/23/05	11/253,371	Notice of Publication of Abstract
11/23/05	11/259,871	Notice of Publication of Abstract
11/23/05	11/267,196	Notice of Publication of Abstract
11/23/05	11/257,185	Notice of Publication of Abstract

1998

November 29, 2005 - con-

11/20/01	11/21/702	Updated Filing Receipt
11/21/01	11/25/666	Filing Receipt
11/21/01	11/20/656	Filing Receipt
11/21/01	01/25/54	Filing Receipt
11/21/01	11/22/761	Updated Filing Receipt
11/21/01	11/26/931	Filing Receipt
11/15/01	3/04/843	entirety of incorporation
11/21/01	9/6/764461	Letter to parent of copies
11/21/01	9/6/763882	Letter to parent of copies
11/21/01	9/6/763492	Letter to parent of copies
11/21/01	9/6/766681	Letter to parent of copies
11/21/01	9/6/763322	Letter to parent of copies
11/21/01	9/6/764932	Letter to parent of copies
11/21/01	9/6/761851	Letter to parent of copies
11/21/01	9/6/765182	Letter to parent of copies
11/21/01	9/6/765381	Letter to parent of copies
11/17/01	11/85/233	Notice of publication of filing
11/17/01	11/85/577	Notice of publication of filing
11/17/01	10/84/7876	Notice of publication of filing
11/17/01	11/23/901	Notice of publication of filing
11/17/01	10/84/466	Notice of publication of filing
11/17/01	10/83/217	Notice of publication of filing
11/17/01	11/27/503	Notice of publication of filing
11/17/01	11/27/533	Notice of publication of filing
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11/17/01	78/53/784	Notice of publication of filing
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11/21/01	76/426/534	Notice of publication of filing
11/21/01	76/426/533	Notice of publication of filing
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11/21/01	78/382/457	Notice of publication of filing

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11/29/05	10/1730.512	Wave number	10/1730.512
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12/17/05	8/19/27089	9 mo. Office Action
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